

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #7	CCRB Case #: 201708879	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/20/2017 2:30 AM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 4/20/2019	EO SOL 4/20/2019	
Date/Time CV Reported Fri, 10/20/2017 1:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/26/2017 11:11 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Kane	06822	948057	034 PCT
2. SGT Ashleigh Sofia	5468	941249	034 PCT
3. POM Johnny Diaz	31661	915603	034 PCT
4. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.POM Johnny Diaz	Abuse: Police Officer Johnny Diaz stopped § 87(2)(b)	§ 87(2)(b)
B.POM Nicholas Kane	Abuse: Police Officer Nicholas Kane stopped § 87(2)(b)	§ 87(2)(b)
C.SGT Ashleigh Sofia	Abuse: Sergeant Ashleigh Sofia stopped § 87(2)(b)	§ 87(2)(b)
D.POM Johnny Diaz	Discourtesy: Police Officer Johnny Diaz spoke discourteously to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
E.POM Johnny Diaz	Abuse: Police Officer Johnny Diaz questioned § 87(2)(b)	§ 87(2)(b)
F.POM Johnny Diaz	Abuse: Police Officer Johnny Diaz frisked § 87(2)(b)	§ 87(2)(b)
G.POM Johnny Diaz	Force: Police Officer Johnny Diaz used physical force against § 87(2)(b)	§ 87(2)(b)
H. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
I.POM Johnny Diaz	Abuse: Police Officer Johnny Diaz searched § 87(2)(b)	§ 87(2)(b)
J.POM Johnny Diaz	Force: Police Officer Johnny Diaz used physical force against § 87(2)(b)	§ 87(2)(b)
K.SGT Ashleigh Sofia	Force: Sergeant Ashleigh Sofia used physical force against § 87(2)(b)	§ 87(2)(b)
L.POM Nicholas Kane	Discourtesy: Police Officer Nicholas Kane spoke discourteously to § 87(2)(b)	§ 87(2)(b)
M.POM Nicholas Kane	Abuse: Police Officer Nicholas Kane threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
N.POM Johnny Diaz	Force: Police Officer Johnny Diaz used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
O.POM Johnny Diaz	Discourtesy: Police Officer Johnny Diaz spoke discourteously to § 87(2)(b)	

Case Summary

On October 20, 2017, § 87(2)(b) filed this complaint via phone with the Internal Affairs Bureau (IAB) on behalf of himself and his § 87(2)(b)-old friend, § 87(2)(b). IAB forwarded this complaint to the CCRB via log number § 87(2)(b) on October 26, 2017.

On October 20, 2017, at approximately 2:30 a.m., § 87(2)(b) and § 87(2)(b) were standing in front of their residence, located at § 87(2)(g) in Manhattan, when they were approached by PO Johnny Diaz, PO Nicholas Kane, and Sgt. Ashleigh Sofia of the 34th Precinct Anti-Crime Team. PO Diaz, PO Kane, and Sgt. Sofia stopped § 87(2)(b) (**Allegations A through C: Abuse of Authority**, § 87(2)(g)). PO Diaz allegedly used the word “fuck” while speaking with § 87(2)(b) and § 87(2)(b) (**Allegation D: Discourtesy**, § 87(2)(g)).

PO Diaz allegedly questioned § 87(2)(b) about guns and drugs (**Allegation E: Abuse of Authority**, § 87(2)(g)). As § 87(2)(b) entered the vestibule, PO Diaz grabbed hold of his arms and conducted a frisk (**Allegation F: Abuse of Authority**, § 87(2)(g)). PO Diaz then tripped § 87(2)(b) to the floor (**Allegation G: Force**, § 87(2)(g)). Officers allegedly struck § 87(2)(b) on his back multiple times before and after he was handcuffed (**Allegation H: Force**, § 87(2)(g)). PO Diaz searched § 87(2)(b) ultimately removing a switchblade knife from his person (**Allegation I: Abuse of Authority**, § 87(2)(g)). As they lifted § 87(2)(b) from the ground, PO Diaz and Sgt. Sofia allegedly shoved him against a wall (**Allegations J and K: Force**, § 87(2)(g)). § 87(2)(b) was escorted to a police vehicle by PO Kane, who allegedly told § 87(2)(b) “Say I won’t fuck you up in front of your own mother” (**Allegation L: Discourtesy**, § 87(2)(g)). **Allegation M: Abuse of Authority**, § 87(2)(g). § 87(2)(b) was ultimately arrested and charged with § 87(2)(b).

At an unspecified time during the incident, PO Diaz allegedly punched § 87(2)(b) in the stomach and then allegedly stated, “We’re doing this shit like the 90s,” (**Allegation N: Force**, § 87(2)(g)). **Allegation O – Discourtesy**, § 87(2)(g).

The CCRB’s Field Team visited the incident location and found that there was no video footage available as surveillance cameras at § 87(2)(b) were not functioning at the time of the incident [see IAs].

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Johnny Diaz stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Nicholas Kane stopped § 87(2)(b)

Allegation C – Abuse of Authority: Sergeant Ashleigh Sofia stopped § 87(2)(b)

§ 87(2)(b) testified that he was standing in front of his building and wearing a dark hooded sweatshirt and black sweatpants. He acknowledged having a switchblade knife tucked into his boxer briefs near his genitals. He denied that the knife was visible or that it created a bulge through his boxer briefs and sweatpants. § 87(2)(b) was also carrying his cell phone in one of his sweatshirt pockets at the time, but it did not create a bulge.

While speaking with § 87(2)(b) observed an unmarked vehicle which he recognized as being commonly used by police officers. § 87(2)(b) did not reach for his waistband or into his pants while the officers were present, though he did adjust his pants by pulling them up.

According to § 87(2)(b) PO Diaz exited the vehicle from the passenger's side and asked § 87(2)(b) for his ID. § 87(2)(b) questioned the validity of the request before opening the door and entering the vestibule of his building. PO Diaz followed and reached toward § 87(2)(b)'s waist. When § 87(2)(b) backed up and covered his torso with his arms, a physical struggle ensued [01 Board Review].

In a phone statement, § 87(2)(b) alleged that an officer, determined by the investigation to be PO Diaz, approached and asked what the men were doing at the location. The interaction between § 87(2)(b) and PO Diaz continued inside the building, but § 87(2)(b) remained outside [02 Board Review].

PO Diaz, PO Kane, and Sgt. Sofia each testified that they were driving northbound on Post Avenue, which is four blocks long and known for criminal activity involving narcotics and weapons, when they first observed § 87(2)(b) in front of § 87(2)(b). § 87(2)(g)

PO Diaz stated that he observed § 87(2)(b) at a distance of eight to ten feet from his position in the front passenger's seat with the window down. He had no prior knowledge of § 87(2)(b) who was facing the street and clutching the right side of the front of the waistband over his jeans. Aside from § 87(2)(b) being outside in a drug-prone location at 2:30 a.m. and the fact that § 87(2)(b) was holding his waistband, nothing else drew PO Diaz's attention to him.

Upon seeing PO Diaz, § 87(2)(b) covered the aforementioned area by clasping both hands together over top of it. PO Diaz considered this to be a furtive movement, and § 87(2)(b)'s actions led PO Diaz to believe that § 87(2)(b) recognized him as an officer. At this point, PO Diaz believed § 87(2)(b) to possess a firearm. However, because § 87(2)(b) was covering the area with his hands, PO Diaz was unable to see whether a bulge was present.

PO Diaz exited his vehicle and approached § 87(2)(b) with the intent to conduct a frisk and determine whether he possessed a firearm. PO Diaz instructed § 87(2)(b) to put his hands down and away from his waistband, but § 87(2)(b) did not comply; he responded only by saying that he was not doing anything other than standing outside his building. PO Diaz asked § 87(2)(b) what he had in his waistband, to which § 87(2)(b) replied, "Nothing." After asking § 87(2)(b) two to three times to show his hands to no avail, PO Diaz reached for § 87(2)(b)'s hand, which was still over his waistband. He intended to remove § 87(2)(b)'s hand from the area, but § 87(2)(b) used his free hand to smack PO Diaz's hand away. § 87(2)(b) walked quickly into the vestibule before PO Diaz stopped him inside by grabbing both of his hands [03 Board Review].

PO Kane, who was the driver of the officers' vehicle, stated that he observed § 87(2)(b) with his right hand inside the front, right portion of his waistband, but he was not moving or adjusting anything. He did not remember what § 87(2)(b) was wearing. Based on previous arrests he has made, PO Kane interpreted § 87(2)(b)'s hand position as a gesture commonly associated with the concealment of a firearm, and he suspected that § 87(2)(b) was, in fact, concealing a firearm at that time. However, he acknowledged that he observed no bulges on § 87(2)(b)'s person. His conclusion was drawn solely from the positioning of § 87(2)(b)'s hand and his later attempts to evade the officers. After making the aforementioned observation, PO Kane and his partners spoke among themselves and asked what § 87(2)(b) was reaching for. No further conversation took place inside the vehicle.

Unlike PO Diaz, PO Kane testified that § 87(2)(b) turned his back to the officers as they pulled up and stopped their vehicle. As PO Kane and his partners exited their vehicle, § 87(2)(b) walked away at a normal, steady pace toward the entrance of § 87(2)(b). Although no officer attempted to verbally communicate with § 87(2)(b) prior to exiting their vehicle, PO Kane's intent was to ask § 87(2)(b) to take his hand from his waistband and inquire as to whether he lived at the location. § 87(2)(b) stated to the officers that he lived at the location as he looked back over his shoulder. He opened the door and continued walking into the vestibule. PO Kane did not remember if any officer told him to stop. The officers followed § 87(2)(b) inside, and PO Diaz requested his ID before reaching for his hand. § 87(2)(b) turned away, at which point a physical struggle erupted [04 Board Review].

Sgt. Sofia stated that she observed § 87(2)(b) walking back and forth in front of § 87(2)(b). He kept sticking his hand in the front center of his waistband as if to fix something, and to pull up or adjust his pants. She did not observe any bulges on § 87(2)(b)'s person or anything else to suggest that he possessed a weapon. However, because § 87(2)(b) continued to reach into his waistband and adjust for about 30 seconds, Sgt. Sofia thought that he may have possessed a weapon. She did not suspect any particular type of weapon. She and her partners discussed their observations and made a collective decision to approach and speak to § 87(2)(b).

Sgt. Sofia exited her vehicle with her partners, and she intended to ask § 87(2)(b) what was going on and whether he lived in the area. Following the officers' inquiry, § 87(2)(b) confirmed that he lived at the location. After issuing three to four unsuccessful orders to show his hands, PO Diaz reached for § 87(2)(b) but § 87(2)(b) slapped PO Diaz's hand away. Sgt. Sofia felt that § 87(2)(b) was guilty of assaulting an officer at this time. Consistent with her partners, Sgt. Sofia testified that § 87(2)(b) then went into the vestibule and was followed by the officers [05 Board Review].

The Stop Report, which was prepared by PO Kane, stated that § 87(2)(b) was observed holding his waistband, and that § 87(2)(b) was asked numerous times to stop reaching toward his waist. According to the document, § 87(2)(b) was frisked, searched, and arrested for the criminal possession of a weapon [06 Board Review].

§ 87(2)(b) s arrest report revealed that he was observed holding his waistband and refused numerous orders to stop reaching for it. A switchblade knife was recovered, and § 87(2)(b) was charged with § 87(2)(b) [20 Board Review].

An individual grabbing at his waistband and walking with his arm held stiffly to his side in a high-crime area does not generate founded suspicion of criminality. People v. Powell, 246 A.D.2d 366 (1998) [07 Board Review]. An officer's direction that an individual remove his hands from his pockets escalates the level of intrusion to that of a common law right of inquiry, requiring a founded suspicion that criminality is afoot. People v. Wilson, 201 A.D.2d 399 (1994) [08 Board Review]. An individual reaching for his waistband while in a high-crime area, absent any additional indicators of a weapon, such as a bulge, will not supply reasonable suspicion. People v. Riddick, 70 A.D.3d 1421 (2010) [09 Board Review]. Officers who observe an unidentified bulge in an individual's pocket have an objective, credible reason to approach that individual, but that individual's flight will not justify the significantly greater intrusion of police pursuit. People v. Holmes, 81 N.Y.2d 1056 (1993) [10 Board Review].

§ 87(2)(g)
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§ 87(2)(g)
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§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation D – Discourtesy: Police Officer Johnny Diaz spoke discourteously to § 87(2)(b)

and § 87(2)(b)

In his phone statement, § 87(2)(b) reported that PO Diaz used the word “fuck” at some point while requesting his ID. He did not provide the exact wording of the request, and he did not repeat this allegation during his sworn in-person statement [01, 11 Board Review].

§ 87(2)(b) who was ultimately uncooperative with the investigation, stated via phone that PO Diaz approached him and § 87(2)(b) and asked, “What the fuck are you doing here?” He made no mention of an officer requesting § 87(2)(b) ID or using the word “fuck” while doing so [02 Board Review].

PO Diaz did not remember asking § 87(2)(b) for ID at any point and did not know if another officer did so. He denied using the word “fuck” while requesting ID or hearing another officer do so. As he interacted with § 87(2)(b) PO Diaz observed § 87(2)(b) seated outside the building. He denied asking either § 87(2)(b) or § 87(2)(b) “What the fuck are you doing here?” or using any profanity toward them [03 Board Review].

PO Kane testified that PO Diaz requested § 87(2)(b) s ID, but he did not recall § 87(2)(b) s response. He did not remember any officer using the word “fuck” or any profanity toward § 87(2)(b) Neither he nor his partners asked a civilian, “What the fuck are you doing here?” [04 Board Review].

Sgt. Sofia stated that no officer requested § 87(2)(b) s ID, and that no officer used profanity toward him. According to Sgt. Sofia, no officer asked a civilian, “What the fuck are you doing here?” [05 Board Review].

§ 87(2)(g)

Allegation E – Abuse of Authority: Police Officer Johnny Diaz questioned § 87(2)(b)

§ 87(2)(b) testified that PO Diaz followed him into the vestibule and questioned him about guns and drugs. PO Diaz may have specifically mentioned crack-cocaine and heroin. § 87(2)(b) replied that he did not know what PO Diaz was talking about. § 87(2)(b) had no drugs on his person, and he denied smoking marijuana or anything else during the incident [01 Board Review].

In a phone statement, § 87(2)(b) stated that he and § 87(2)(b) were smoking marijuana outside the building just prior to the officers’ approach. As PO Diaz approached § 87(2)(b) he asked where the guns and crack were [02 Board Review].

The officers unanimously denied observing any party smoking marijuana outside of § 87(2)(b) or detecting the odor of marijuana at the scene [03-05 Board Review].

PO Diaz stated that he asked § 87(2)(b) numerous times to remove his hand from the area of his waistband, and that the orders were ignored. As such, he asked § 87(2)(b) what was in his waistband, to which § 87(2)(b) responded, “Nothing.” PO Diaz denied asking § 87(2)(b) about crack-cocaine, heroin, drugs, or guns [03 Board Review].

Sgt. Sofia denied that any officer made the alleged inquiry of § 87(2)(b). Similarly, PO Kane had no memory of any officer asking these questions [04-05 Board Review].

An individual grabbing at his waistband and walking with his arm held stiffly to his side in a high-crime area does not generate founded suspicion of criminality. People v. Powell, 246 A.D.2d 366 (1998) [07 Board Review]. An officer’s direction that an individual remove his hands from his pockets escalates the level of intrusion to that of a common law right of inquiry, requiring a founded suspicion that criminality is afoot. People v. Wilson, 201 A.D.2d 399 (1994) [08 Board Review].

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Allegation F – Abuse of Authority: Police Officer Johnny Diaz frisked § 87(2)(b)

Allegation I – Abuse of Authority: Police Officer Johnny Diaz searched § 87(2)(b)

§ 87(2)(b) testified that PO Diaz reached for the left side of his waist immediately after questioning him about guns and drugs. § 87(2)(b) recoiled and covered his torso with his arms. According to § 87(2)(b) PO Diaz took him to the ground, where a physical struggle ensued. While § 87(2)(b) was on the ground, PO Diaz reportedly frisked the front of his waistband and reached into his pockets. Following the frisk, PO Diaz reached into § 87(2)(b) s boxer-briefs and retrieved the knife from the front [01 Board Review].

As noted above, the officers testified that they observed § 87(2)(b) standing outside of § 87(2)(b), a location within a high-crime area, at 2:30 a.m. The officers all reported that § 87(2)(b) had his hand in the area of his waistband, though it was disputed whether § 87(2)(b) s hand was inside or outside of the waistband and whether his hand was stationary or appeared to be adjusting anything. While each officer testified to believing that § 87(2)(b) possessed a weapon based on the position of his hand, no officer testified to observing any bulges on § 87(2)(b) s person. The officers also stated that § 87(2)(b) refused orders to remove

his hands from his waistband, and that he walked away from them as he entered his building [03-05 Board Review].

PO Diaz offered a different timing of the frisk. He testified that § 87(2)(b) refused several orders to remove his hands from the area of his waistband, after which he reached for § 87(2)(b)'s hand to remove it from the area. When § 87(2)(b) slapped PO Diaz's hand away and walked into the vestibule, PO Diaz followed. Although PO Diaz still believed § 87(2)(b) to possess a weapon, he did not consider him to be guilty of any other crimes at this time.

PO Diaz grabbed § 87(2)(b)'s hands at first, and as he adjusted his grips from § 87(2)(b)'s hands to his arms, PO Diaz moved one of his hands to § 87(2)(b)'s waistband in the area § 87(2)(b) had been holding. PO Diaz felt a hard object in that location. He described this object as "something iron," and believed it was a firearm based on his observations and experience in prior firearm-related arrests rather than any physical properties of the object. He was unable to discern its shape or see whether a bulge existed because § 87(2)(b) was moving back and forth and flailing his arms upward. After bringing § 87(2)(b) to the ground and handcuffing him, PO Diaz stood § 87(2)(b) up and reached into the same area of the waistband that § 87(2)(b) had been holding. He did not conduct another frisk prior to this. From that location, he retrieved what he believed was a gravity knife, which was clipped to the inside of § 87(2)(b)'s pants. Although the knife had a clip, its presence was obscured by § 87(2)(b)'s belt, and PO Diaz had not previously seen it [03 Board Review].

PO Kane also testified that § 87(2)(b) refused orders to remove his hands from his waistband, though he denied observing a bulge. PO Diaz reached for § 87(2)(b) and § 87(2)(b) bladed his body away. PO Diaz grabbed § 87(2)(b)'s hand, and while maintaining hold of him, he said, "He has something. Could be a gun." PO Diaz gave no further explanation of what he felt. PO Diaz then pulled § 87(2)(b)'s hand from his waistband and found that he was holding a switchblade knife [04 Board Review].

Sgt. Sofia stated that § 87(2)(b) refused several of PO Diaz's demands that he remove his hands from his waistband. She acknowledged that she and PO Diaz grabbed § 87(2)(b)'s hands, and that PO Diaz then said that he felt a hard object. She denied that PO Diaz described the object or that he mentioned a gun. According to Sgt. Sofia, § 87(2)(b) was also frisked on his waistband, specifically in the area he had been reaching, by PO Diaz after being handcuffed. Following the frisk, PO Diaz reached into § 87(2)(b)'s pants and retrieved a gravity knife which had been clipped to the inside of his pants [05 Board Review].

In the context of a lawful stop, an officer's observation of an individual manipulating an object in his waistband area is sufficient to justify the officer's belief that the individual may be armed. People v. Taveras, A.D.2d 306 (1994) [12 Board Review]. However, if an officer is operating on an objective, credible reason, he has only the authority to seek information. Absent additional information suggesting that a criminality is afoot, further intrusion is not permitted. People v. Howard, 50 N.Y.2d 583 (1980) [13 Board Review].

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Force: Police Officer Johnny Diaz used physical force against § 87(2)(b)

§ 87(2)(b) testified that he and PO Diaz were alone in the vestibule when PO Diaz reached for his waist. § 87(2)(b) backed up and took a defensive posture with his arms covering his torso while asking PO Diaz what the hell he was doing. § 87(2)(b) inconsistently described the events that followed. All in the same sworn statement, § 87(2)(b) first described that PO Diaz grabbed his wrist and tripped him to the floor. Later, he stated that he was unsure of how exactly he was taken to the ground. At various points during this same interview, § 87(2)(b) described this action as both a fall and an intentional takedown. Regardless, he landed on his stomach. He made no mention of any injuries resulting from the takedown [01 Board Review].

§ 87(2)(b) stated that he observed officers throw § 87(2)(b) to the ground. He provided no additional detail in his phone statement [02 Board Review].

PO Diaz stated that he was under the impression that § 87(2)(b) was concealing a firearm, and that § 87(2)(b) had refused several orders to remove his hands from the area of his waistband. When PO Diaz reached for § 87(2)(b)'s hand, § 87(2)(b) smacked his hand away. As noted above, PO Diaz felt a hard object on § 87(2)(b)'s waistband when he grabbed hold of his arms. § 87(2)(b) moved back and forth and flailed his arms. PO Diaz felt that he would only be able to control § 87(2)(b) on the ground, so he used his bodyweight to get § 87(2)(b) off balance as he held both of § 87(2)(b)'s arms. PO Diaz then swept § 87(2)(b)'s legs with his foot as he pulled down on § 87(2)(b)'s arms. He did not remember whether his partners assisted in executing the takedown. § 87(2)(b) landed on his stomach [03 Board Review].

Sgt. Sofia stated that she and PO Diaz executed a takedown because § 87(2)(b) was kicking and fighting the officers' efforts to control him. They used their grips on his arms to pull him to the ground. Sgt. Sofia did not remember any officer using a foot sweep, and she stated that no additional force was used during the takedown [05 Board Review].

PO Kane stated that § 87(2)(b) refused to place his hands behind his back while in a standing position and that he intentionally threw himself to the ground during the physical struggle. PO Kane denied that any officer intentionally took § 87(2)(b) to the ground [04 Board Review].

There were no TRIs prepared for this incident [14 Board Review]. According to his arrest report, § 87(2)(b) was not charged with resisting arrest [20 Board Review].

§ 87(2)(g)

Allegation H – Force: Officers used physical force against § 87(2)(b)

Allegation J – Force: Police Officer Johnny Diaz used physical force against § 87(2)(b)

Allegation K – Force: Sergeant Ashleigh Sofia used physical force against § 87(2)(b)

§ 87(2)(b) reported that PO Diaz’s partners entered the vestibule after he hit the ground. He then felt officers attempting to handcuff him. § 87(2)(b) denied pulling his arms under his body or otherwise resisting, though he acknowledged that the pain in his left wrist due from a pre-existing injury caused him to pull his arm away in a knee-jerk reaction. It took approximately five seconds to handcuff § 87(2)(b). During and after this process, § 87(2)(b) felt multiple strikes on his back. He estimated that he was kicked rapidly about six times and punched about four times. § 87(2)(b) did not see who struck him because he was on his stomach. He had some back pain in the days after the incident, but he did not seek medical treatment.

According to § 87(2)(b) he was lifted from the floor by PO Diaz and Sgt. Sofia, who shoved him against a wall. This action caused § 87(2)(b)’s head to strike the wall. § 87(2)(b) believed that his mother, § 87(2)(b) had arrived in the vestibule by this point [01 Board Review].

§ 87(2)(b) stated that she was inside of her second floor apartment when someone buzzed her intercom. When she went downstairs to open the door, she heard § 87(2)(b) screaming and the impact of officers striking him, though she did not actually observe any strikes. When she arrived in the vestibule, § 87(2)(b) was already handcuffed, and the officers were frisking and searching him. During the search, an officer pushed § 87(2)(b) against the wall, causing his head to strike the wall [15 Board Review].

§ 87(2)(b) stated that § 87(2)(b) was thrown to the ground, punched, and kicked by officers. He made no mention of how § 87(2)(b) got up or what happened afterward [02 Board Review].

All of the officers testified that § 87(2)(b) resisted being handcuffed by placing his hands under his torso. Each officer testified to solely pulling on his arms in order to overcome this resistance following the takedown. The officers unanimously denied striking § 87(2)(b) or seeing any other officer do so. Similarly, PO Diaz and Sgt. Sofia denied shoving § 87(2)(b) against a wall or seeing his head strike a wall at any point. PO Kane denied having any memory of the alleged force [03-05 Board Review].

There were no TRIs prepared for this incident [14 Board Review]. According to his arrest report, § 87(2)(b) was not charged with resisting arrest or assaulting an officer [20 Board Review].

§ 87(2)(g)

§ 87(2)(g)

Allegation L – Discourtesy: Police Officer Nicholas Kane spoke discourteously to § 87(2)(b)

Allegation M – Abuse of Authority: Police Officer Nicholas Kane threatened § 87(2)(b) with the use of force.

In both statements provided to the CCRB, § 87(2)(b) reported that he was escorted to a vehicle by PO Kane, who allegedly told him, “Say I won’t fuck you up in front of your own mother” [01, 11 Board Review].

§ 87(2)(b) made no mention of an officer telling § 87(2)(b) “Say I won’t fuck you up in front of your own mother” [02 Board Review].

§ 87(2)(b) stated that § 87(2)(b) was escorted to an RMP by two officers, one of whom said something to him in English. § 87(2)(b) who only speaks Spanish, did not understand the comment. However, § 87(2)(b) informed her at the time that an officer had threatened to hit him in front of her [15 Board Review].

PO Kane acknowledged that he escorted § 87(2)(b) to his RMP, though he denied having and difficulties with him. He denied making the alleged statement, threatening to use force against § 87(2)(b) or using profanity toward him [04 Board Review].

While he acknowledged escorting § 87(2)(b) to a vehicle, PO Diaz denied threatening him with the use of force or using profanity toward him. He did not hear any officer make the alleged statement. He acknowledged speaking with § 87(2)(b) whom he knew to be § 87(2)(b)s mother, as § 87(2)(b) was being escorted to an RMP [03 Board Review].

Sgt. Sofia did not remember who escorted § 87(2)(b) to a vehicle but denied doing so herself. Sgt. Sofia denied hearing any officer threaten to use force against him or speak discourteously toward him. She acknowledged that she observed a female, who she identified as § 87(2)(b)'s mother, in the vestibule speaking with PO Diaz at an unspecified time [05 Board Review].

§ 87(2)(g)
[REDACTED]

Allegation N – Force: Police Officer Johnny Diaz used physical force against § 87(2)(b)

Allegation O – Discourtesy: Police Officer Johnny Diaz spoke discourteously to § 87(2)(b)

In a phone statement one week after the incident, § 87(2)(b) alleged that an officer, identified by the investigation as PO Diaz, punched him in the stomach and stated, “We’re doing this like the 90s.” This statement was also mentioned by § 87(2)(b) one day after the incident in the IAB log. § 87(2)(b) did not volunteer that profanity was used in either of his accounts, and he was ultimately uncooperative in providing a sworn statement to the CCRB [02 Board Review].

In his sworn statement three weeks after the incident, § 87(2)(b) stated that § 87(2)(b) informed him that an officer punched him. He did not witness this himself. He heard an officer tell § 87(2)(b) “We’re doing this shit like the 90s” [01 Board Review].

All of the officers denied saying or hearing another officer say, “We’re doing this shit like the 90s.” PO Diaz denied using the word “shit” at any point during the incident [03-05 Board Review].

There were no TRIs prepared for this incident [14 Board Review].

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) or § 87(2)(b) [16 Board Review].
- In his 22-year tenure, PO Diaz has been the subject of 28 allegations stemming from eight CCRB cases. Since 2014, he has been the subject of two discourtesy allegations, both of which were closed as unsubstantiated. He was also the subject of a frisk allegation in case 201704791, which is pending Board Review. The allegation was recommended to be closed as substantiated. § 87(2)(g).
- In his nine-year tenure, PO Kane has been the subject of eight allegations stemming from three CCRB cases. A frisk allegation was recommended to be substantiated against him in case 201704971, which is pending Board Review. § 87(2)(g).
- In her 11-year tenure, Sgt. Sofia has been the subject of four allegations stemming from three CCRB cases. No allegations have been substantiated against her, § 87(2)(g).

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.
- A Notice of Claim inquiry was submitted to the Office of the New York City Comptroller on February 6, 2018. Its results will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date